

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

NICHOLAS NEAL,

Plaintiff,

v.

NDOC, *et al.*,

Defendants.

Case No. 3:22-cv-00315-MMD-CSD

SCREENING ORDER

I. SUMMARY

Pro se Plaintiff Nicholas Neal, who is incarcerated in the custody of the Nevada Department of Corrections (“NDOC”), has submitted a civil-rights complaint under 42 U.S.C. § 1983 and filed an application to proceed *in forma pauperis*. (ECF Nos. 1, 1-1.) The matter of the filing fee will be temporarily deferred. The Court now screens Neal’s civil-rights complaint under 28 U.S.C. § 1915A.

II. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which an incarcerated person seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. See *id.* §§ 1915A(b)(1), (2). *Pro se* pleadings, however, must be liberally construed. See *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States; and (2) that the alleged violation was committed by a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

1 In addition to the screening requirements under § 1915A, under the Prison
2 Litigation Reform Act (“PLRA”), a federal court must dismiss an incarcerated person’s
3 claim if “the allegation of poverty is untrue” or if the action “is frivolous or malicious, fails
4 to state a claim on which relief may be granted, or seeks monetary relief against a
5 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2). Dismissal of a
6 complaint for failure to state a claim upon which relief can be granted is provided for in
7 Federal Rule of Civil Procedure 12(b)(6), and the Court applies the same standard under
8 § 1915 when reviewing the adequacy of a complaint or an amended complaint. When a
9 court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend
10 the complaint with directions as to curing its deficiencies, unless it is clear from the face
11 of the complaint that the deficiencies could not be cured by amendment. *See Cato v.*
12 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

13 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See*
14 *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to
15 state a claim is proper only if the plaintiff clearly cannot prove any set of facts in support
16 of the claim that would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756,
17 759 (9th Cir. 1999). In making this determination, the Court takes as true all allegations
18 of material fact stated in the complaint, and the Court construes them in the light most
19 favorable to the plaintiff. *See Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996).
20 Allegations of a *pro se* complainant are held to less stringent standards than formal
21 pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While the
22 standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must
23 provide more than mere labels and conclusions. *See Bell Atl. Corp. v. Twombly*, 550 U.S.
24 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient.
25 *See id.*

26 Additionally, a reviewing court should “begin by identifying pleadings [allegations]
27 that, because they are no more than mere conclusions, are not entitled to the assumption
28 of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide

1 the framework of a complaint, they must be supported with factual allegations.” *Id.* “When
 2 there are well-pleaded factual allegations, a court should assume their veracity and then
 3 determine whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining
 4 whether a complaint states a plausible claim for relief . . . [is] a context-specific task that
 5 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

6 Finally, all or part of a complaint filed by an incarcerated person may be dismissed
 7 *sua sponte* if that person’s claims lack an arguable basis either in law or in fact. This
 8 includes claims based on legal conclusions that are untenable (*e.g.*, claims against
 9 defendants who are immune from suit or claims of infringement of a legal interest which
 10 clearly does not exist), as well as claims based on fanciful factual allegations (*e.g.*,
 11 fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989);
 12 *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

13 **III. SCREENING OF COMPLAINT**

14 In his Complaint, Neal sues four Defendants and several Doe Defendants for
 15 events that allegedly occurred while he was incarcerated at Northern Nevada Correctional
 16 Center (“NNCC”). (ECF No. 1-1 at 1-4.) Neal sues Defendants NDOC, Michael Minev,
 17 Pritchett, and Christy. (*Id.* at 2-4.) Neal brings one claim and seeks monetary relief. (*Id.*
 18 at 7-13.) Neal alleges the following.

19 **A. Factual Allegations¹**

20 Between 7:00 and 8:00 a.m. on August 19, 2021, Nurse Christy and Nurse
 21 Practitioner Pritchett conducted a follow-up medical appointment at Neal’s cell door. (*Id.*
 22 at 5, 8.) Neal was housed in an administratively segregated unit that was locked down at
 23 the time. (*Id.*) Christy and Pritchett discussed Neal’s inconclusive test for Hepatitis C and
 24 his treatment options. (*Id.* at 5, 9.) When Neal told Correctional Officer Rey about what
 25 happened, Rey said that Christy and Pritchett’s conduct was a “blatant HIPPA violation”
 26 and to file a grievance about it. (*Id.*) During evening pill-call, Correctional Officer Hawk

28 ¹The Court uses any job position or title that Neal ascribes to Defendants. This
 should not be construed as a finding about the truthfulness of those allegations.

1 said medical was aware they screwed up and it would not happen again. (*Id.*)² There is
 2 an exam room located in Neal's housing unit that is used for private meetings. (*Id.* at 5,
 3 8.) Medical appointments are usually conducted around 11:00 a.m. so they do not
 4 interfere with morning feeding, which begins at 7:00 a.m. (*Id.*)

5 Neal filed an informal grievance about the event, which was denied. (*Id.* at 9-10.)
 6 The response was returned to Neal two months late. (*Id.* at 10.) Neal filed a first-level
 7 grievance that was also denied. (*Id.*) The reason given was that the employee in question
 8 no longer worked for the NDOC. (*Id.*) Neal filed a second-level grievance, which was also
 9 denied for that reason. (*Id.*)

10 Based on these allegations, Neal contends that Defendants violated his right to
 11 privacy under the Fourteenth Amendment's Due Process Clause. The Court liberally
 12 construes the Complaint as alleging a claim based on that theory of liability. The Court
 13 addresses that theory and any issues below.

14 **B. Neal Cannot Sue the NDOC in Federal Court.**

15 Neal sues the NDOC, but that agency is an arm of the State of Nevada and is not
 16 a "person" for purposes of 42 U.S.C. § 1983. See *Taylor v. List*, 880 F.2d 1040, 1045 (9th
 17 Cir. 1989) (holding that the NDOC, a state agency, is immune from suit under the Eleventh
 18 Amendment). The Court therefore dismisses the NDOC from the Complaint with prejudice
 19 because amendment in federal court would be futile.

20 **C. Fourteenth Amendment Due Process—Medical Privacy**

21 The Fourteenth Amendment's Due Process Clause protects individuals against the
 22 disclosure of personal matters, and "clearly encompasses medical information and its
 23 confidentiality." *Whalen v. Roe*, 429 U.S. 589, 598-99, 604 n.32 (1977); *Norman-*
 24 *Bloodsaw v. Lawrence Berkeley Lab.*, 135 F.3d 1260, 1269 (9th Cir. 1998). "[T]he right to
 25 'informational privacy' applies both when an individual chooses not to disclose highly
 26 sensitive information to the government and when an individual seeks assurances that
 27

28 ²Rey and Hawk are not included among the Defendants listed in the Complaint, and the Court does not construe the Complaint as alleging claims against either person.

1 such information will not be made public.” *Planned Parenthood of S. Ariz. v. Lawall*, 307
2 F.3d 783, 789-90 (9th Cir. 2002) (internal citations omitted). But that right “is not absolute;
3 it is a conditional right [that] may be infringed upon a showing of proper governmental
4 interest.” *Id.* (quotations omitted). “The government may obtain and use medical
5 information if its interest in obtaining the information outweighs a person’s interest in
6 privacy.” *Roe v. Sherry*, 91 F.3d 1270, 1274 (9th Cir. 1996). “The government’s interest
7 in obtaining and using the information must advance a ‘legitimate state interest’ and the
8 government’s actions must be ‘narrowly tailored to meet the legitimate interest.” *Id.*
9 (quotation omitted).

10 Based on the allegations, Christy and Pritchett discussed the results of Neal’s
11 Hepatitis C test and treatment options with Neal between his cell door. Neal does not
12 allege that a third party overheard their conversation. Nor does he allege facts from which
13 it could be inferred that a third party overheard their conversation. For example, Neal does
14 not allege that any correctional officer or prisoner was close enough to overhear their
15 conversation. The Court finds that these allegations are not enough to state a colorable
16 claim that Christy or Pritchett disclosed Neal’s private medical information to a third party.
17 But it does not yet appear that Neal cannot state any set of facts upon which relief could
18 be granted. Thus, the Fourteenth Amendment Due Process Clause claim for disclosure
19 of private medical information is dismissed without prejudice and with leave to amend.

20 But to the extent Neal contends that the disclosure of his information violates the
21 Health Insurance Portability and Accountability Act (“HIPAA”), that claim fails because
22 “HIPPA itself provides no private right of action.” *Seaton v. Mayberg*, 610 F.3d 530, 533
23 (9th Cir. 2010) (quotation omitted). And to the extent Neal contends that denial of his
24 grievances or his late receipt of a grievance response constitutes a due-process violation,
25 that claim fails because prisoners do not have a right for prison officials to process or
26 investigate grievances in any specific way. *See Mann v. Adams*, 855 F.2d 639, 640 (9th
27 Cir. 1988) (holding that a state’s unpublished policy statements establishing a grievance
28 procedure do not create a constitutionally protected liberty interest); *Ramirez v. Galaza*,

1 334 F.3d 850, 860 (9th Cir. 2003) (holding that there is no liberty interest in the processing
2 of appeals because there is no liberty interest entitling inmates to a specific grievance
3 process). The claims under HIPAA and the Fourteenth Amendment Due Process Clause
4 for grievance procedures are therefore dismissed with prejudice because amendment
5 would be futile.

6 **IV. LEAVE TO AMEND**

7 Because it appears that Neal could cure the deficiencies of his Fourteenth
8 Amendment Due Process Clause claim for medical privacy, the Court grants him leave
9 to amend to attempt to replead that claim within 30 days from the date of entry of this
10 order. This means Neal has leave to plead true facts to show that any individual overheard
11 the medical conversation between him, Christy, and Pritchett. But Neal does not have
12 leave to add new claims.

13 If Neal chooses to file an amended complaint, he is advised that an amended
14 complaint replaces the original complaint, so the amended complaint must be complete
15 in itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546
16 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the original complaint is
17 irrelevant; an amended pleading supersedes the original”); see also *Lacey v. Maricopa*
18 *Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed with prejudice,
19 a plaintiff is not required to reallege them in a subsequent amended complaint to preserve
20 them for appeal). This means Neal’s amended complaint must contain all claims,
21 Defendants, and factual allegations that Neal wishes to pursue in this lawsuit. Neal should
22 file the amended complaint on this Court’s approved prisoner-civil-rights form, and it must
23 be entitled “First Amended Complaint.” Neal must follow the instructions on the form. He
24 need not and should not allege very many facts in the “nature of the case” section of the
25 form. Rather, in each claim, he should allege facts sufficient to show what each Defendant
26 did to violate his civil rights.

27 **V. CONCLUSION**

28 It is therefore ordered that a decision on the application to proceed *in forma*

1 *pauperis* (ECF No. 1) is deferred.

2 It is further ordered that the Fourteenth Amendment Due Process Clause claim for
3 disclosure of medical information is dismissed without prejudice and with leave to amend.

4 It is further ordered that the claims under HIPAA and the Fourteenth Amendment's
5 Due Process Clause for grievance procedures are dismissed with prejudice.


6 It is further ordered that Defendant NDOC is dismissed with prejudice from the
7 Complaint.

8 It is further ordered that Defendants Michael Minev, C. Pritchett, and Christy are
9 dismissed without prejudice from the Complaint.

10 It is further ordered that if Neal chooses to file an amended complaint curing the
11 deficiencies of his Complaint as outlined in this order, he will file it within 30 days of the
12 date of entry of this order. Neal should use the approved form and he will write the words
13 "First Amended" above the words "Civil Rights" in the caption. Neal is advised that the
14 Court will screen the amended complaint in a separate order. The screening process will
15 take several months. But if Neal chooses not to file an amended complaint, this action will
16 be subject to dismissal without prejudice for failure to state a claim.

17 The Clerk of Court is directed to file the Complaint (ECF No. 1-1) and send Neal a
18 copy of the Complaint (ECF No. 1-1), the approved form for filing a § 1983 complaint, and
19 instructions for the same.

20 DATED THIS 1st Day of September 2022.

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23 _____
24 MIRANDA M. DU
25 CHIEF UNITED STATES DISTRICT JUDGE
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